NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

First Student, Inc. and Andrin J. Mitchell and Teamsters Union Local No. 959 affiliated with International Brotherhood of Teamsters. Case 19–UD-077098

December 5, 2012 ORDER DENYING REVIEW

By Chairman Pearce and Members Hayes and Griffin

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Petitioner's Request for Review of the Regional Director's Order Dismissing Petition is denied as it raises no substantial issues warranting review. The Regional Director properly dismissed the petition because the Fairbanks, Alaska employees were part of a merged, national bargaining unit while, in contrast, the petition is limited to the Fairbanks employees. See, e.g., Illinois School Bus Co., 231 NLRB 1 (1977) (the unit for a 9(e)(1) deauthorization election must be coextensive with the contractual unit); see also S.B. Restaurant of Huntington, 223 NLRB 1445 (1976) (deauthorization petition for single restaurant dismissed where filed 1 year after all company restaurants merged into a single, nationwide unit).

Our dissenting colleague does not assert that the Regional Director misapplied existing law but instead argues the law should be reconsidered. Our colleague asserts, among other things, that the Fairbanks employees, when they first voted for representation, may have been unaware of the possibility that their unit could be merged into a larger unit, and may have been unaware when they subsequently approved the merger that their vote could one day lead to a decision like that of the Regional Director here. Nevertheless, the Regional Director found that the Fairbanks employees had clear notice of, and an opportunity to vote on, the proposed merger, and also found that those employees overwhelmingly voted to ratify the agreement that expressly created the single, nationwide unit.

Regrettably, representation case law is complex. But basing our decisions on what voters may or may not have known about the potential future consequences of their vote would introduce more, not less, complexity and uncertainty.

Accordingly, the dismissal of the petition is affirmed.

Dated, Washington, D.C. December 5, 2012

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD MEMBER HAYES, dissenting.

I would grant review to reconsider the Board's merger policy to the extent that it precludes a deauthorization election in the originally certified Fairbanks, Alaska unit less than a year after that unit has been merged by the parties into a much larger nationwide bargaining unit. Even absent a lengthy history of bargaining in the original smaller unit, there is a serious question whether employees' statutory rights to a referendum on union security should be effectively foreclosed. There is no indication in the record that employees in the two-facility Fairbanks unit were aware of the possibility of the merger when they initially voted for union representation in 2009, or when a bargaining agreement containing a union-security clause was executed for that unit alone. Moreover, there is no indication that employees in this unit were aware, when voting after 2 years of separate representation to ratify the merger into a nationwide unit, that doing so would foreclose forever their right to petition for deauthorization in the original, separately certified unit. Finally, there is little likelihood that permitting employees in the original certified unit to vote to deauthorize would have a significant disruptive effect on bargaining in the merged unit, particularly one which includes employees in right-to-work states where the contractual union-security contract terms cannot be enforced. Under these circumstances, the brief history of bargaining in the larger unit does not warrant denying employees in the Fairbanks unit the independent statutory right they reasonably expected to retain as a check on the Union's ability to compel their payment of dues as a condition of employment.

Dated, Washington, D.C. December 5, 2012

Brian E. Hayes, Member

NATIONAL LABOR RELATIONS BOARD